

Chapter 2: Requirements for EITI implementing countries

How to read this chapter

This chapter sets out the requirements that must be adhered to by countries implementing the EITI. There are two groups of implementing countries: EITI Candidate and EITI Compliant countries. EITI candidacy is a temporary state which is intended to lead, in a timely fashion, to compliance with the EITI Standard. In order to become an EITI Candidate, implementing countries must, through the process outlined below, demonstrate that they have met implementation requirement 1. In order to become EITI Compliant, implementing countries must demonstrate through Validation that they have met the EITI implementation requirements 1-7 set out in this chapter. The implementation requirements are summarised in Box 1.

The requirements set out here are minimum requirements and implementing countries are encouraged to go beyond them where stakeholders agree that this is appropriate. Stakeholders are encouraged to consult additional guidance materials on how to best ensure that the requirements are met, available via www.eiti.org.

Box 1- EITI implementation requirements

The EITI Requires:

1. Effective oversight by the multi-stakeholder group (MSG) (incorporating the sign-up steps detailed in Table 1 ~~below~~^{above}).
2. Timely publication of EITI Reports.
3. EITI Reports that include contextual information providing an overview of the extractive sector.
4. EITI Reports that are comprehensive, including full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies.
5. A credible assurance process applying international standards.
6. EITI Reports that are comprehensible, actively promoted, publicly accessible, and contribute to public debate.
7. That the multi-stakeholder group (MSG) takes steps to act on lessons learned and review the outcomes and impact of EITI implementation.

Each of these requirements are set out in full in this chapter.

Comment [m1]: Has the Secretariat considered how the requirements would be effectively summarised in a fact sheet?

EITI Sign-up

A country intending to implement the EITI is required to undertake a number of steps before applying to become an EITI Candidate (see Box 2).

Box 2– Sign-up steps

- 1.1 The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- 1.2 The government is required to appoint a senior individual to lead on the implementation of the EITI.
- 1.3 The government is required to commit to work with civil society and companies, and establish a multi-stakeholder group (MSG) to oversee the implementation of the EITI.
- 1.4 The multi-stakeholder group (MSG) is required to maintain a current workplan, fully costed and aligned with the deadlines established by the EITI Board.

When the country has completed these steps and wishes to be recognised as an EITI Candidate, the government should submit an EITI Candidate Application to the EITI Board (see Box 3).

Box 3 – Applying to become an EITI Candidate

When the country has completed the sign-up steps and wishes to be recognised as an EITI Candidate, the government, with the support of the multi-stakeholder group (MSG), should submit an EITI Candidate Application, using the prescribed application form.¹ The application should describe the activities undertaken to date and provide evidence demonstrating that each of the sign-up steps has~~ve~~ been completed. The application should include contact details for government, civil society and private sector stakeholders involved in the EITI.

The EITI Board will review the application and assess whether the sign-up steps have been completed. The International Secretariat will contact stakeholders at the national level to ascertain their views on the sign-up process, and seek comments from supporting governments, international civil society groups, supporting companies and supporting organisations and investors. The International Secretariat will work closely with the senior individual appointed by the government to lead on EITI implementation in order to clarify any outstanding issues. The EITI Board's Outreach and Candidacy Committee will make a recommendation to the EITI Board on whether a country's application should be accepted. The EITI Board will make the final decision.

The EITI Board has stated a preference to make decisions on admitting an EITI Candidate country at the regular EITI Board Meetings. Where there is a long period between meetings, the EITI Board will consider making a decision via Board circular.

When the EITI Board admits an EITI Candidate, it also establishes deadlines for publishing the first EITI Report and undertaking Validation. An implementing country's first EITI Report must be published within 18 months from the date that the country was admitted as an EITI Candidate. EITI Candidate countries are required to commence Validation within two and a half years from the date that the country was admitted as an EITI Candidate. Further information on deadline policies is available in section 1.4 below.

¹ Available from the International Secretariat on the EITI website, www.eiti.org.

EITI Implementation requirements

EITI implementation requirement 1

The EITI requires effective oversight by the multi-stakeholder group (MSG)

Comment [m2]: Consistently spell out or abbreviate throughout.

Overview - The EITI requires effective multi-stakeholder oversight including a functioning multi-stakeholder group (MSG) involving the government, companies and the full, independent, active, and effective participation of civil society. This requirement addresses the key elements, including: (1.1) government commitment, (1.2) government oversight, (1.3) the establishment of ~~a multi-stakeholder group~~ the (MSG), and (1.4) agreeing a workplan with clear objectives for EITI implementation, and a timetable that is aligned with the deadlines established by the EITI Board (1.6-1.8).

1.1 The government is required to issue a public statement of its intention to implement the EITI

It is required that a statement is made by the head of state or government, or an appropriately delegated government representative.

1.2 The government is required to appoint a senior individual to lead on the implementation of the EITI

The appointee should have the confidence of all stakeholders, the authority and freedom to coordinate action on the EITI across relevant ministries and agencies, and be able to mobilize resources for EITI implementation.

Comment [m3]: consistently use "EITI" or "the EITI" throughout.

1.3 The government is required to work with civil society and companies, and establish a multi-stakeholder group (MSG) to oversee the implementation of the EITI

- a) It is required that the government, companies and civil society are fully, actively and effectively engaged in the process.
- b) It is required that there is an enabling environment for company and civil society participation with regard to relevant laws, regulations, and administrative rules as well as actual practice in implementation of the EITI. The fundamental rights of civil society and company representatives substantively engaged in EITI - including but not restricted to members of the MSG - must be respected.
- c) Any obstacles to civil society or company participation must be removed.
- d) Stakeholders, including but not limited to members of the MSG:
 - i. must refrain from actions which result in narrowing or restricting public debate in relation to implementation of the EITI;
 - ii. must be able to speak freely on transparency and natural resource governance issues;
 - iii. must be substantially engaged in the design, implementation, monitoring and evaluation of the EITI process, and ensure that it contributes to public debate;
 - iv. must have the right to communicate and cooperate with each other; and
 - v. must be able to operate freely and express opinions ~~about the EITI~~ without restraint, coercion or reprisal.
- e) In establishing the MSG, the government must:
 - i. ensure that the invitation to participate in the group is open and transparent;

- ii. ensure that stakeholders are adequately represented (this does not mean that they need to be equally represented numerically). The MSG must comprise appropriate stakeholders, including, but not limited to, the private sector, civil society (including independent civil society groups and other civil society, such as the media and parliamentarians), and relevant government ministries. Each stakeholder group must have the right to appoint ~~its~~their own representatives, bearing in mind the desirability of pluralistic and diverse representation;
 - iii. ensure that senior government officials are represented on the MSG;
 - iv. ensure that there is a process for changing group members ~~which that~~ does not include any suggestion of coercion or attempts to include members who will not challenge the status quo; and
 - v. consider establishing the legal basis for the group.
- f) It is required that the MSG agrees clear public terms of reference (TORs). The TORs should at a minimum include provisions on:

The role, responsibilities and rights of the MSG

- i. It is required that the members of the MSG have the capacity to carry out their duties.
- ii. Civil society groups involved in EITI as members of the MSG must be operationally, and in policy terms, independent of government and/or companies.
- iii. The MSG should undertake effective outreach activities, including through communication (e.g. media, website, letters) with citizens, civil society groups and companies, informing them of the government's commitment to implement ~~the~~EITI, and the central role of companies and civil society, as well as widely disseminating the public information that results from the EITI process (e.g., the EITI Report).
- iv. Members of the multi-stakeholder group should liaise with their constituency groups.

Approval of workplans, EITI Reports and annual activity reports

- v. It is required that the MSG approves annual workplans, the appointment of the Independent Administrator, the terms of reference for the Independent Administrator, EITI Reports and annual activity reports.
- vi. The MSG should oversee the EITI reporting process and ~~engage on~~ Validation in accordance with chapter 3.

Comment [CM4]: The MSG will no longer oversee validation

Internal governance rules and procedures

- vii. EITI requires an inclusive decision-making process throughout implementation, with each constituency being treated as a partner. The MSG should agree procedures for nominating and changing ~~MSG representatives~~, decision-making, length of tenure and frequency of meetings.
- viii. There should be sufficient advance notice of meetings and timely circulation of documents prior to their debate and proposed adoption.
- ix. The MSG must keep written records of its discussions and decisions.

Comment [CM5]: Perhaps repetitive of 1.3 3 iv above.

1.4 The multi-stakeholder group (MSG) ~~must~~ is required to maintain a current workplan, fully costed and aligned with the deadlines established by the EITI Board

The workplan must:

- a) Set EITI implementation objectives that are linked to the EITI Principles and reflect national priorities for the extractive industries. ~~MSGs are encouraged to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting and public~~

understanding of revenues and encourage high standards of transparency and accountability in public life, government operations, and in business.

- b) Reflect the results of consultations with key stakeholders, and be endorsed by the MSG.
- c) Include measurable and time bound activities to achieve the agreed objectives. The scope of EITI implementation should be tailored to contribute to the desired outcomes and impact that have been identified during the consultation process. The workplan must:
- i. assess and outline plans to address any potential capacity constraints in government agencies, companies and civil society that may be an obstacle to effective EITI implementation;
 - ii. address the scope of EITI reporting, including plans for addressing technical aspects of reporting, such as comprehensiveness and data reliability (see requirements 4 and 5); and
 - iii. identify and outline plans to address any potential legal or regulatory obstacles to EITI implementation, including, if applicable, any plans to incorporate EITI requirements within national legislation or regulation.
- d) Identify domestic and external sources of funding and technical assistance where appropriate in order to ensure timely implementation of the agreed workplan.
- e) Be made widely available to the public, for example published on the national EITI website and/or other relevant ministries and agencies websites, in print media or in places that are easily accessible to the public.
- f) Be reviewed and updated annually in the annual activity report as per requirement 7.2.
- g) Include a timetable for implementation that is aligned with the reporting and Validation deadlines established by the EITI Board (see 1.6, below) and that takes into account administrative requirements (i.e. procurement processes and funding).

Comment [m6]: Font is wrong

1.5 Adapted implementation

Should the MSG conclude that there are exceptional circumstances for deviating from the implementation requirements, it must seek prior EITI Board approval for adapted implementation. Except under extraordinary circumstances, such approval must be sought when a country submits its candidacy application. The request must be endorsed by the MSG. The request should explain the rationale for adapted implementation and proposed actions and timetable.

The EITI Board will only consider allowing adaptations in exceptional circumstances. In considering such requests, the EITI Board will place a priority on the need for comparable treatment between countries and ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that the EITI Report is comprehensive, reliable and will contribute to public debate.

1.6 Reporting and Validation deadlines

a) EITI reporting deadlines

The EITI requires timely publication of EITI Reports (see requirement 2). Failure to meet this requirement may result in suspension or delisting.

If the EITI Report is not published by the deadline, the country will be suspended unless the EITI Board has granted an extension under 1.6(d). The suspension will be lifted if the EITI Board is satisfied that the outstanding EITI Report is published within six months of the deadline. If the

outstanding reports are not published within six months of the deadline, the suspension will remain in force until ~~the International Secretariat~~EITI Board is satisfied that confirms that the country has met requirement 2~~the subsequent EITI report is published~~. If the suspension is not lifted within one year the EITI Board will consider delisting.

Comment [m7]: Further clarifies Board agreement in Oslo.

In the event that EITI reporting is significantly delayed, the MSG should take steps to ensure that EITI reports are issued for the intervening reporting periods so that that every year is subject to reporting.

Comment [m8]: Font

b) EITI Validation deadlines

EITI Candidates are required to commence Validation within two and a half years of becoming an EITI Candidate. The validation will determine whether the country is: (1) compliant, (2) not compliant, but has made meaningful progress; or (3) not compliant, and has not made meaningful progress (see below). If EITI Compliant status is not achieved but the country has made meaningful progress, the country~~it~~ may in some circumstances retain its status as an EITI Candidate country for an additional period. A country may hold candidacy status for no more than four and a half years ~~after~~^{ref} becoming an EITI Candidate².

EITI Compliance: Where Validation verifies that a country has met all of the requirements the EITI Board will designate that country as EITI Compliant. Compliant countries will be required to undertake Validation every three years thereafter. Where a country has become EITI Compliant, but concerns are raised about whether its implementation of the EITI has subsequently fallen below the required standard, the EITI Board reserves the right to require the country to undergo a new Validation or a Secretariat Review. Stakeholders may petition the EITI Board if they consider that compliant status should be reviewed. ~~This request could may be mediated (if necessary) through a stakeholder's constituency representative(s) on the EITI Board.~~ The EITI Board will review the situation and exercise its discretion as to whether to require an earlier Validation or Secretariat Review. Subject to the findings of that assessment, the EITI Board will determine the country's status. The EITI Board reserves the right to re designate a country as an EITI Candidate (specifying corrective actions), or to consider suspension or delisting.

Comment [m9]: Is there a new maximum candidacy period?

Meaningful progress: Where the first Validation verifies that an EITI Candidate has made meaningful progress toward achieving EITI Compliant status but has not met all of the requirements, the country will retain its EITI Candidate status for a period equivalent to the maximum candidacy period less the time it has already spent as an EITI Candidate (not including the time taken for the country to undertake Validation). In cases where candidacy is retained, the EITI Board will set out the remedial actions needed to achieve compliance to be assessed through a second Validation. Where the remedial actions necessary for achieving compliance can be assessed quickly and objectively, the country may request, and the EITI Board will may consider whether to commission a Secretariat Review. This procedure will also apply in cases where a Compliant country does not meet all the requirements in a subsequent validation.

Comment [CM10]: Is this decision taken by the board upon finding the country has made meaningful progress, vice later upon the country's application?

Where a second Validation (or Secretariat Review) verifies that a country has made meaningful progress but has not achieved compliance, the EITI Board will suspend the country. The EITI Board will set out the remedial actions needed to achieve compliance. The suspension will be lifted if a Secretariat Review verifies that the remedial actions have been completed and the EITI Board is satisfied that the outstanding EITI requirements are met. If the suspension is in effect for more than twelve months, the EITI Board will consider whether to delist the country.

In assessing "meaningful progress" the EITI Board will have regard to:

² The time it takes for the country to undergo Validation is not counted as part of the maximum candidacy period.

- (1) The EITI process – in particular the functioning of the MSG and clear, strong commitment from government;
- (2) The status and quality of EITI reporting, including progress in meeting the requirements for timely reporting as per requirement 2 and, where applicable, efforts to address recommendations for improving EITI implementation.

No meaningful progress: Where Validation or a Secretariat Review concludes that there has been no meaningful progress, the Board will ~~consider whether to~~ delist the country.

c) Annual activity reports

MSGs are required to publish annual activity reports (see requirement 7.2). The report of the previous year's activities must be published by 1 July of the following year. The EITI Board will establish appropriate deadlines for new EITI Candidates. If the annual activity report is not published within six months of this deadline (i.e. by 31 December the following year), the country will be suspended until the EITI Board is satisfied that the outstanding activity report is published.

d) Extensions

An implementing country may apply for an extension if it is unable to meet any of the deadlines specified in sections (a), (b) and (c) above. The EITI Board will apply the following test in assessing any extension requests:

1. The request must be made in advance of the deadline and be endorsed by the MSG;
2. The EITI Board will only grant an extension if the MSG can demonstrate that it has been making meaningful progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing "meaningful progress" the EITI Board will have regard to:
 - (i) the EITI process – in particular the functioning of the MSG and clear, strong commitment from government; and
 - (ii) the status and quality of EITI reporting, including progress in meeting the requirements for timely reporting as per requirement 2 and efforts to address recommendations for improving EITI reporting.
3. The exceptional circumstance(s) must be explained in the request from the MSG.
4. No extensions will be granted which would increase the maximum candidacy period.

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1.7 Suspension and delisting

a) Suspension

Where it is manifestly clear that the EITI Principles and requirements are not in a significant aspect adhered to by an implementing country, the EITI Board may suspend or delist that country.

Where the EITI Board is concerned that adherence to the EITI Principles and requirements are compromised, it may task the International Secretariat with gathering information about the situation and submitting a report to the EITI Board.

Countries that are experiencing exceptional political instability or conflict may voluntarily apply for voluntary suspension for up to one year. The government should lodge an application for voluntary suspension with the International Secretariat, which will submit the application to the EITI Board for decision. The government's application should note the views of the MSG.

Comment [m11]: Why can't the Board also choose to suspend countries due to instability or conflict?

Suspension of an implementing country is a temporary mechanism. The EITI Board shall set a time limit for the implementing country to address breaches of the EITI Standard. The government may apply to have the suspension lifted at any time. The application should document the steps agreed by stakeholders to ~~re-start~~continue the EITI implementation and Validation process, and the work-plan to achieve compliance.

Comment [m12]: What if the cause of suspension is political instability or conflict?

Comment [m13]: For many suspended countries, especially those which have been suspended for late reporting (i.e. Mauritania, Yemen), we would not wish to imply that they should pause their implementation processes.

If the EITI Board is satisfied that corrective measures have been undertaken in that period, the suspension will be lifted. The EITI Board will consider setting new reporting and Validation deadlines as appropriate. The Board will not sanction the commencement of Validation during the suspension period. At all stages in the process, the EITI Board shall ensure its concerns and decisions are clearly communicated to the implementing country.

Comment [m14]: It will not always be appropriate for suspended countries (i.e. Sierra Leone) to undertake a Secretariat Review. We should reserve the flexibility to call for a new validation.

Suspended countries will be considered an "EITI Candidate country (suspended)" or an "EITI Compliant country (suspended)" for the period of suspension, with their suspended status clearly indicated on the EITI website and elsewhere.

b) Delisting

If an implementing country has been subject to suspension, and the matter has not been resolved to the satisfaction of the EITI Board by the agreed deadline and/or if the suspension is in effect for more than one year, the EITI Board will consider whether to delist the country (i.e. ~~revoke~~lose its status as an EITI implementing country).

Delisting may also occur if Validation verifies that an implementing country has not achieved compliance in accordance with the timelines established by the EITI Board (requirement 1.6).

A delisted country may reapply for admission as an EITI Candidate at any time. The EITI Board will apply the agreed procedures with respect to assessing EITI Candidate applications. It will also assess previous experience in EITI implementation, including previous barriers to effective implementation, and the corrective measures implemented.

1.8 Appeals

The implementing country concerned may petition the EITI Board to review its decision regarding suspension, delisting or the country designation as EITI Candidate or EITI Compliant following Validation. The EITI Board will consider such petitions with regard to the facts of the case, the need to preserve the integrity of the EITI and the principle of consistent treatment between countries. The EITI Board's decision is final. The country concerned may, prior to the notice periods under Article 8 of the Articles of Association, appeal a decision of the EITI Board made in accordance with the first paragraph to the next ordinary Members' Meeting.

EITI implementation requirement 2 The EITI requires timely publication of EITI Reports

Comment [m15]: This remains out of balance with requirement 1. We suggest that after all policy issues have been agreed by the Board on a no-objection basis, that the Secretariat initiate a round of edits for organization and grammar only.

Overview - EITI Reports are most useful and relevant when they are published regularly and contain data that is timely. Requirement 2 establishes deadlines for timely EITI Reporting.

- 2.1 Implementing countries are required to produce their first EITI Report within 18 months of being admitted as an EITI Candidate. Thereafter, implementing countries are expected to produce EITI Reports on an annual basis.
- 2.2 EITI Reports must cover data no older than the second to last complete accounting period (e.g., an EITI Report published in calendar/financial year 2014 must be based on data no later than calendar/financial year 2012). MSGs are encouraged to explore opportunities to publish EITI Reports as soon as practically possible.
- 2.3 The MSG is required to agree the accounting period covered by the EITI Report.

EITI implementation requirement 3 The EITI requires that EITI Reports include contextual information that provides an overview of the extractive sector

Overview - In order for EITI Reports to be comprehensible and useful to the public, they must be accompanied by publicly available contextual information about the extractive industries. This information should include: the legal framework and fiscal regime (3.2), an overview of the extractive industries (3.3), the extractive industries contribution to the economy (3.4), production data (3.5), state participation in the extractive industries (3.6), revenue allocations (3.6 -3.7), license registers and license allocations (3.9-3.10), beneficial ownership (3.11) and contracts (3.12). The MSG should agree on who prepares the contextual information for the EITI Report (3.1).

3.1 Compiling contextual information

The MSG should agree on who prepares the contextual information for the EITI Report. The information should be clearly sourced.

3.2 The EITI Report must describe the legal framework and fiscal regime governing the extractive industries

- a) This information must include a description of the fiscal regime, including the level of fiscal devolution, an overview of the relevant laws and regulations, and information on the roles and responsibilities of the relevant government agencies.
- b) Where the government is undertaking reforms, the MSG is encouraged to ensure that these are documented in the EITI Report.

3.3 The EITI Report should provide an overview of the extractive industries, including any significant exploration activities

3.4 The EITI Report must disclose, when available, information about the contribution of the extractive industries to the economy for the fiscal year covered by the EITI Report

This information is expected to include:

- a) Size of the extractive industries in absolute terms and as a percentage of GDP, including an estimate of informal sector activity, where applicable.
- b) Total government revenues generated by the extractive industries (including taxes, royalties, bonuses, fees, and other payments) in absolute terms and as a percentage of total government revenues.
- c) Exports from the extractive industries in absolute terms and as a percentage of total exports.
- d) Employment in the extractive industries in absolute terms and as a percentage of the total workforce.
- e) Key regions/areas where production is concentrated.

Comment [CM16]: New provision?

3.5 The EITI Report must disclose production data for the fiscal year covered by the EITI Report, including:

- a) Total production volumes and the value of production by commodity, and, when relevant, by state/region.
- b) Total export volumes and the value of exports by commodity, and, when relevant, by state/region of origin, except in cases where this reporting will disclose commercially sensitive information.

Comment [m17]: Our Australian colleagues have flagged that for a few commodities, there are only one or two producers. Export volumes coupled with export values would divulge commercially sensitive information.

3.6 Where state participation in the extractive industries gives rise to material revenue payments, the EITI Report must include:

- a) An explanation of the prevailing rules and practices regarding financial relationship between the government and state owned enterprises (SOEs), e.g., the rules and practices governing transfers of funds between the SOE and the state, retained earnings, reinvestment and third-party financing.
- b) Disclosures from SOEs on their quasi-fiscal expenditures such as payments for social services, public infrastructure, fuel subsidies and national debt servicing. The MSG is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams, and should include SOE subsidiaries and joint ventures (Requirement 4).
- c) Disclosures from the government and/or state owned enterprises of their level of ownership in mining, oil and gas companies operating within the country's 's oil, gas and mining sector, including those held by SOE subsidiaries and joint ventures, and any changes in the level of ownership during the reporting period. This information should include details regarding the terms attached to their equity stake, including their level of responsibility to cover expenses at various phases of the project cycle (e.g. full-paid equity, free equity, carried interest). Where there have been changes in the level of government and/or SOEs ownership during the reporting period, the government and/or SOEs is-are expected to disclose the terms of the transaction, including details regarding valuation. Where the government and/or SOEs have provided loans or loan guarantees to mining, oil and gas companies operating within the country, details on these transactions should be disclosed in the EITI Report.

3.7 The EITI Report must describe the distribution of revenues from the extractive industries

- a) For extractive industry revenues, whether cash and/or in-kind, indicate which revenues are recorded in the national budget. For revenues not recorded in the national budget, the allocation of these revenues must be explained, with links provided to relevant financial reports as applicable (e.g. sovereign wealth/development funds, sub-national governments, state-owned companies, and other extra-budgetary entities).

- b) MSGs are encouraged to reference national revenue classification systems, and international standards such as the IMF Government Finance Statistics Manual.

3.8 The multi-stakeholder group (MSG) is encouraged to include further information on revenue management and expenditures in the EITI Report, including:

- a) A description of any extractive revenues earmarked for specific programmes or geographic regions. This should include a description of the methods for ensuring accountability and efficiency in their use.
- b) A description of the country's budget and audit processes and links to the publicly available information on budgeting, expenditures and audit reports.
- c) Timely information from the government that will further public understanding and debate around issues of revenue sustainability and resource dependence, including assumptions concerning production, commodity prices and revenue forecasts from the extractive industries, current and projected non-resource revenues, and the non-resource fiscal balance.

3.9 Registry of licenses

- a) The term 'license' in this context refers to any license, lease, title, permit, or concession by which the government confers on a company(ies) or individual(s) rights to explore or exploit oil, gas and/or mineral resources. The MSG should agree an appropriate definition and include it in the EITI Report.
- b) Implementing countries are required to maintain a publicly available register or cadastre system/s with timely and comprehensive information regarding each of the licenses pertaining to companies covered in the EITI Report:
 - i. license holder(s);
 - ii. coordinates of the license area;
 - iii. date of application, date of award and duration of the license; and
 - iv. in the case of production licenses, the commodity being produced.

Unless the MSG demonstrates that there are significant legal or practical barriers to disclosure, implementing countries are expected to make publicly available information regarding the licenses pertaining to companies that are not participating in the EITI Report (i.e., where their payments fall below agreed materiality thresholds).

- c) Where the information set out in 3.9(b) above is already publicly available, it is sufficient to include a reference (or link) in the EITI Report. Where such registers or cadastres do not exist or are incomplete, the EITI Report should disclose any gaps in the publically available information and document efforts to strengthen these systems. In the interim, the EITI Report should include the information set out in 3.9(b) above.

3.10 Allocation of licenses

- a) Implementing countries are required to disclose information related to the award or transfer of licenses pertaining to the companies covered in the EITI Report, including: a description of the process for transferring or awarding the license, the technical and financial criteria used, information about the recipient(s) of the license that has been transferred or awarded (including consortium members where applicable), and any deviations from the applicable legal and regulatory framework.
- b) Where licenses are awarded through a bidding process during the accounting period covered by the EITI Report, the government is also required to disclose the list of applicants and the bid criteria.

Comment [CM18]: Still problematic for Australia

Comment [m19]: font

Comment [m20]: repetitive of a)

- c) Where the requisite information set out in 3.10(a) and 3.10(b) above is already publicly available, it is sufficient to include a reference (or link) in the EITI Report.
- d) The MSG may wish to include additional information on the allocation of licenses in the EITI Report, including summary data and commentary on the efficiency and effectiveness of these systems.

3.11 Beneficial ownership

- a) ~~It is required that the government and/or state owned enterprises disclose their level of beneficial ownership in oil, gas and mining companies operating within the country, and any changes in the level of ownership during the accounting period covered by the EITI Report (see requirement 3.6(c)). It is recommended that implementing countries maintain a publicly available register of the beneficial owners of the corporate vehicles/entity/ies that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership³. Where this information is already publicly available (e.g., through filing to corporate regulators and stock exchanges), the EITI Report should include guidance on how to access this information.~~
 - b) ~~Where such registers do not exist or are incomplete, it is recommended that implementing countries request companies participating in the EITI process provide for inclusion in the EITI Report the identities of their beneficial owners and the level of ownership. Where this information is already publicly available (e.g., through filing to corporate regulators and stock exchanges), the EITI Report should include guidance on how to access this information.~~⁴information.
 - ~~e) Implementing countries may maintain a publicly available register of the beneficial owners of the corporate entity/ies that bid for, operate or invest in extractive assets, including the identity(ies) of their beneficial owner(s) and the level of ownership. It is required that the government and/or state owned enterprises disclose their level of beneficial ownership in oil, gas and mining companies operating within the country, and any changes in the level of ownership during the accounting period covered by the EITI Report (see requirement 3.6(c)).~~
- ~~c) Where the MSG addresses beneficial ownership, the MSG should agree a definition of the term beneficial owner, taking international norms into account. Publicly listed companies, including wholly-owned subsidiaries, are not required to disclose information on their beneficial owner(s). In the case of joint ventures each entity within the partnership should be responsible for the accuracy of the information provided.~~

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3.12 Contracts

- a) It is a requirement that the EITI Report documents the government's policy on disclosure of contracts and agreements that govern the exploration and exploitation of oil, gas and minerals, and documents any MSG discussions on this topic. This should include relevant legal provisions, actual disclosure practices and any reforms that are planned or underway. Where applicable, the EITI Report should provide an overview of any contracts that are publicly available, and include a reference (or link) to the location where the contracts are published.

³ At the 22nd EITI Board meeting, it was agreed that the EITI will in the future require disclosure of beneficial ownership. Subject to successful piloting, the EITI Board will develop detailed provisions with a view to make this a requirement from 1 January 2016.

⁴ At the 22nd EITI Board meeting, it was agreed that the EITI will in the future require disclosure of beneficial ownership. Subject to successful piloting, the EITI Board will develop detailed provisions with a view to make this a requirement from 1 January 2016.

- b) Implementing countries are encouraged to publicly disclose any contracts, agreements, or other documents that provide the terms attached to the [exploration and] exploitation of oil, gas and minerals and that give rise to material revenues covered in the EITI Report.
- c) The term contract means:
- the full text of any contract, license, concession or agreement granted by or entered into by the government and which regulate rights to [explore and] exploit oil gas and mineral resources;
 - The full text of any annex, addendum or rider that establishes details relevant to the ~~[exploration and] exploitation~~ development rights mentioned above or its execution; and
 - the full text of any alteration to the terms of the original contract.

Where implementing countries address this issue, the MSG should agree a definition of contracts and include it in the EITI Report.

Comment [m21]: It's defined above. Do we mean "material" contracts?

EITI implementation requirement 4

The EITI requires the production of comprehensive EITI Reports which include full government disclosure of extractive industry revenues, and disclosure of all material payments to government by oil, gas and mining companies

Overview - An understanding of company payments and government revenues can inform public debate about the governance of the extractive industries. In order to be useful, EITI data must be comprehensive, i.e., it should cover all material payments by companies and a complete material account of government revenues. Requirement 4 outlines the steps that the MSG needs to consider in order to ensure that the EITI Report is comprehensive. Section 4.1 sets out the requirements related to the types of payments and revenues to be covered in the EITI Report. Section 4.2 specifies which companies and government entities, including state-owned enterprises, should be required to report.

4.1 Defining the taxes and revenues to be covered in the EITI Report

- a) In advance of the reporting process, the multi-stakeholder group is required to agree which payments and revenues are material and therefore must be disclosed, including appropriate materiality definitions and thresholds. Payments and revenues are considered material if their omission or misstatement could significantly affect comprehensiveness of the EITI report. A description of each revenue stream, related materiality definitions and thresholds should be included in the EITI Report. In establishing materiality definitions and thresholds, the MSG should consider the size of the revenues streams relative to total revenues. The MSG should document the options considered and the rationale for establishing the definitions and thresholds.
- b) The following revenue streams should be included:
- i. The host government's production entitlement (such as profit oil);
 - ii. national state-owned company production entitlement;
 - iii. profits taxes;
 - iv. royalties;
 - v. dividends;
 - vi. bonuses (such as signature, discovery, production);
 - vii. licence fees, rental fees, entry fees and other considerations for licences and/or concessions;
 - viii. any other significant payments and material benefit to government.

Any revenue streams or benefits should only be excluded where they are not **relevant material** or where the MSG agrees that their omission will not materially affect the comprehensiveness of the EITI Report.

- c) **Sale of the state's share of production:** Where the sale of the state's share of production is material, the government, including state owned enterprises, are required to disclose the volumes sold and revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (see requirement 5.2.e). Reporting could also break down disclosures by the type of product, price, market, and sale volume. Where practically feasible, the MSG is encouraged to task the Independent Administrator with reconciling the volumes sold and revenues received by including the buying companies in the reporting process.
- d) **Infrastructure provisions and barter arrangements:** Where agreements based on infrastructure provisions or other barter-type arrangements play a significant role, the MSG is required to agree a mechanism for incorporating benefit streams under these agreements into its EITI reporting process. To be able to do so, the MSG needs to gain a full understanding of the terms of the contract, the parties involved, the resources which have been pledged by the government, the value of the balancing benefit stream, e.g. infrastructure works, and the materiality of these agreements relative to conventional contracts. Where the MSG concludes that these agreements are material, the MSG is required to develop a reporting process with a view to achieving a level of transparency commensurate with other payments and revenue streams. Where reconciliation of key transactions is not feasible, the MSG should agree an approach for unilateral company and/or government disclosures to be attached to the EITI Report.
- e) **Social expenditures:** Where social expenditures mandated by law or the contract with the government that governs the extractive investment are material, the EITI Report must disclose and, where possible, reconcile these transactions.
 - i. Where such benefits are provided in-kind, it is required that the EITI Report discloses the nature and the deemed value of the in-kind transaction. Where the beneficiary of the social expenditure is a third party (i.e. not a government agency), it is required that the name and function of the beneficiary is disclosed.
 - ii. Where reconciliation is not feasible, the EITI Report should include unilateral company and government disclosures of these transactions.
 - iii. Where the MSG agrees that discretionary social payments and transfers are material, the MSG is encouraged to develop a reporting process with a view to achieving transparency commensurate with other payments and revenues. Where reconciliation of key transactions is not possible (e.g., where company payments are "in-kind" or to a third party), the MSG may wish to consider unilateral company and/or government disclosures to be attached to the EITI Report.
- f) **Transportation:** Where revenues from the transportation of oil, gas and minerals **are material constitute one of the largest revenue streams from the extractive sectors**, the government and state owned enterprise/s are **encouraged** to disclose the revenues received. The published data must be disaggregated to levels commensurate with the reporting of other payments and revenue streams (see requirement 5.2.e). The EITI Report could include:
 - i. a description of the transportation arrangements including: the product; transportation route(s); and the relevant companies and government entities, including SOEs, involved in transportation;
 - ii. definitions of the relevant transportation taxes, tariffs or other relevant payments, and the methodologies used to calculate them;
 - iii. disclosure of tariff rates and volume of the transported commodities;
 - iv. disclosure of revenues received by government entities, including SOEs, in relation to

- transportation of oil, gas and minerals; and
- v. where practically feasible, the MSG is encouraged to task the Independent Administrator with reconciling material payments and revenues associated with the transportation of oil, gas and minerals.

4.2 Defining which companies and government entities are required to report

- a) The EITI Report must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state owned enterprises, in accordance with the agreed scope (requirement 4.1).

~~b) All companies making material payments to government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material.~~

~~c) All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope. Unless there are significant practical barriers, the government is required to comprehensively disclose all revenues received from oil, gas and mining companies in accordance with the agreed scope reporting templates, i.e., the total government revenues for each of the agreed benefit streams., including The government must also disclose revenues from companies not considered material.~~

a) The EITI Report must provide a comprehensive reconciliation of government revenues and company payments, including payments to and from state owned enterprises, in accordance with the agreed scope (requirement 4.1). All companies making material payments to government are required to comprehensively disclose these payments in accordance with the agreed scope. An entity should only be exempted from reporting if it can be demonstrated that its payments and revenues are not material. All government entities receiving material revenues are required to comprehensively disclose these revenues in accordance with the agreed scope.

b) Unless there are significant practical barriers, the government is also additionally required to provide, in aggregate, additional information about the total revenues received in each of the benefit streams agreed in the scope, including revenues that fall below agreed materiality thresholds, from the oil, gas and mining companies in accordance with the agreed scope, i.e., the total government revenues for each of the agreed benefit streams, including revenues from companies not considered material. Where this data is not available, the Independent Administrator should draw on any relevant data and estimates from other sources that can be cited in the EITI Report in order to provide a comprehensive account of the total government revenues.

i. State-owned enterprises (SOEs): The MSG must ensure that the reporting process comprehensively addresses the role of state owned enterprises, including material payments to SOEs from oil, gas and mining companies, and transfers between SOEs and other government agencies.

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ii. **Sub-national payments:** It is required that the MSG establish whether direct payments from companies to sub-national government entities are material. Where material, the MSG is required to ensure that company payments to sub-national government entities and the receipt of these payments are disclosed and reconciled in the EITI Report.

iii. **Sub-national transfers:** Where transfers between national and sub-national government entities are related to the extractive industries and are mandated by a national constitution, statute or other revenue sharing mechanism, the MSG is required to ensure that such transfers, where material, are disclosed in the EITI Reports. The EITI Report

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should disclose the revenue sharing formula, if any, as well as any discrepancies between the transfer amount calculated in accordance with the relevant revenue sharing formula and the actual amount that was transferred. The MSG is encouraged to reconcile these transfers. The MSG is encouraged to ensure that any material discretionary or ad-hoc transfers⁷ are disclosed and where possible reconciled in the EITI Report. Where there are constitutional and/or significant practical barriers to the participation of sub-national government entities, the MSG may seek adapted implementation in accordance with requirement 1.5.

EITI implementation requirement 5

EITI requires a credible assurance process applying international standards

Overview - Requirement 5 seeks to ensure a credible EITI reporting process so that the EITI Report contains data on which stakeholders can rely. The EITI seeks to build on existing audit and assurance systems in government and industry and to promote international practice and standards. The MSG is required to appoint an Independent Administrator to reconcile the data submitted by companies and government entities (5.1). Section 5.2 outlines the issues that the MSG and the Independent Administrator need to consider in agreeing the terms of reference for the reconciliation, including the assurances that need to be provided by the reporting entities. Section 5.3 empowers the Independent Administrator to make an assessment of the comprehensiveness and reliability of the data and to make recommendations for the future. The EITI Report must be endorsed by the MSG (5.4)

5.1 Appointment of the Independent Administrator

The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards. The Independent Administrator must be perceived by the MSG to be credible, trustworthy and technically competent. The MSG should endorse the appointment of the Independent Administrator.

5.2 Agreement of Independent Administrator's terms of reference

The MSG and the Independent Administrator are required to agree terms of reference in accordance with the agreed upon procedure for EITI Reports⁸ and based on the standard terms of reference endorsed by the EITI Board. Should the MSG wish to adapt or deviate from these agreed upon procedures, approval from the EITI Board must be sought in advance (see requirement 1.5). In agreeing the terms of reference, the MSG and the Independent Administrator are required to:

Comment [CM22]: No footnote

- a) **Agree the reporting templates** in accordance with the agreed scope (see requirement 4).
- b) **Review audit and assurance practices.** The MSG, in consultation with the Independent Administrator, is required to examine the audit and assurance procedures in companies and government entities participating in the EITI reporting process, including the relevant laws and regulations, any reforms that are planned or underway, and whether these procedures are in line with international standards.⁶ It is recommended that a summary of the findings is included in the EITI Report.
- c) **Agree on the assurances to be provided by reporting entities to the Independent Administrator.** It is required that the terms of reference agreed by the MSG and Independent Administrator outlines what information should be provided to the Independent Administrator

by the participating companies and government entities to assure the credibility of the data. Where deemed necessary by the Independent Administrator and the MSG, this may include:

- i. That a senior company or government official from each reporting entity signs off on the completed reporting form as a complete and accurate record;
 - ii. That the companies attach a confirmation letter from their external auditor that confirms that the information they have submitted is comprehensive and consistent with their audited financial statements. Where the company operates internationally, endorsement by the group external auditor is preferable. The MSG may wish to phase in this procedure so that the confirmation letter could be integrated in their auditor's usual work program. Where companies are not required by law to have an external auditor, this should be clearly documented, noting any reforms that are planned or underway.
 - iii. Where relevant and practicable, government reporting entities may be requested to obtain a certification of the accuracy of the government's disclosures from their external auditor (or equivalent); and
- d) Agree appropriate provisions relating to safeguarding confidential information.
- e) The MSG is required to agree the level of disaggregation for the publication of data. It is required that EITI data is presented by individual company, government entity, and revenue stream. Reporting at project level is required, ~~provided that it is consistent with accepted international standards.~~

Comment [m23]: In Oslo the Board agreed carefully worded language. This should only be changed at the agreement of all stakeholders.

5.3 Assessment and recommendations from the Independent Administrator

- a) In accordance with the agreed term of reference, the Independent Administrator should prepare an EITI Report that comprehensively reconciles the information disclosed by the reporting entities, identifying any discrepancies.
- b) The Independent Administrator should produce data files that can be published together with the EITI Report. It is required that that summary data from each EITI Report is submitted electronically to the International Secretariat according to a specified format.
- c) It is required that the EITI Report includes an assessment from the Independent Administrator on the comprehensiveness and reliability of the data presented, including an informative summary of the work performed by the independent administrator and the limitations of the assessment provided. Based on the government's disclosure of total revenues as per requirement 4.2(b) the Independent Administrator should indicate the coverage of the reconciliation exercise.
- d) ~~This~~ should include an assessment of whether all companies and government entities within the agreed scope of the reporting process provided the requested information. Any gaps or weaknesses in reporting to the Independent Administrator must be disclosed in the EITI Report, including naming any entities that failed to comply with the agreed procedures, and an assessment ~~on~~ of whether this is likely to have had material impact on comprehensiveness of the report.
- e) It is required that the EITI Report documents whether the participating companies and government entities had their financial statements audited in the financial year/s covered by the EITI Report. Any gaps or weaknesses must be disclosed. Where audited financial statements are publicly available, it is recommended that the EITI Report advises readers on how to access this information.

Comment [CM24]: Keep consistent with other structures – what is "this"?

- f) The Independent Administrator may wish to make recommendations for strengthen the reporting process in the future, including any recommendations regarding audit practices and reforms needed to bring them into line with international standards. Where previous EITI Reports have recommended corrective actions and reforms, the Independent Administrator should comment on the progress in implementing those measures.

5.4 It is a requirement that the MSG endorses the EITI Report prior to publication

EITI implementation requirement 6

The EITI requires that EITI Reports are comprehensible, actively promoted, publicly accessible, and contribute to public debate

Overview - Regular disclosure of natural resource revenue streams and payments from extractives companies is of little practical use without public awareness and understanding of what the figures mean and public debate about how resource revenues can be put to good use. Requirement 6 ensures that stakeholders are engaged in dialogue about natural resources revenue management.

- 6.1 The multi-stakeholder group (MSG) must ensure that the EITI Report is comprehensible, actively promoted, publicly accessible and contributes to public debate.** Key audiences should include government, parliamentarians, civil society, companies and the media. The MSG is required to:
- produce paper copies of the EITI Report, and ensure that they are widely distributed;
 - make the EITI Report available on-line, and publicise its availability;
 - ensure that the EITI Report is comprehensible, including by ensuring that it is written in a clear, accessible style and in appropriate languages; and
 - ensure that outreach events – whether organised by government, civil society or companies – are undertaken to spread awareness of and facilitate dialogue about the EITI Report across the country.
- 6.3 MSGs are encouraged to make EITI Reports machine readable, and to code or tag EITI Reports and data files so that the information can be compared with other publicly available data. As per requirement 3.7(b), MSGs are encouraged to reference national revenues classification systems, and international standards such as the IMF Government Finance Statistics Manual. The MSG is encouraged to:
- Produce brief summary reports, with clear and balanced analysis of the information, ensuring that the authorship of different elements of the EITI Report is clearly stated;
 - Summarize and compare the share of each revenue stream to the total amount of revenue that accrues to each respective level of government;
 - Where legally and technically feasible, consider automated on-line disclosure of extractive revenues and payments by governments and companies on a continuous basis (for instance, in cases where extractive revenue data is already published regularly by government or where national taxation systems are trending towards on-line tax assessments and payments). Such continuous government reporting could be viewed as interim reporting, and as an integral feature of the national EITI process which is captured by the reconciled EITI Report issued annually; and
 - Undertake capacity-building efforts, especially with civil society and through civil society organisations, to increase awareness of the process, improve understanding of the information and data from the reports, and encourage use of the information by citizens, the media, and others.

EITI implementation requirement 7

The EITI requires that the multi-stakeholder group (MSG) takes steps to act on lessons learned and review the outcomes and impact of EITI implementation

Overview: EITI Reports lead towards the fulfilment of the EITI Principles by contributing to wider public debate. It is also vital that lessons learnt during implementation are acted upon, that discrepancies identified in the EITI Report are explained and, if necessary addressed, and that EITI implementation is on a stable, sustainable footing.

7.1 The multi-stakeholder group (MSG) is required to take steps to act on lessons learned; to identify, investigate and address the causes of any discrepancies; and to consider recommendations for improvement from the Independent Administrator

7.2 The multi-stakeholder group (MSG) is required to review the outcomes and impact of EITI implementation on natural resource governance

Comment [m25]: font

- a) The MSG is required to publish annual activity reports.⁷ The annual activity reports must include:
- i. A summary of EITI activities undertaken in the previous year;
 - ii. An assessment of progress with meeting and maintaining compliance with each EITI requirement, and any steps taken to exceed the requirements;
 - iii. An overview of the MSG's responses to and progress made in addressing the recommendations from reconciliation and Validation in accordance with provision 7.1.a. MSGs are encouraged to list each recommendation and the corresponding activities that have been undertaken to address the recommendations; and
 - iv. An assessment of progress with achieving the objectives set out in its workplan (requirement 1.4), including the impact and outcomes of the stated objectives.
 - v. A narrative account of efforts to strengthen EITI implementation, including any actions to extend the detail and scope of EITI reporting or to increase engagement with stakeholders.
- b) All stakeholders should be able to participate in the production of the annual activity report and reviewing the impact of EITI implementation. Civil society groups and industry involved in EITI, particularly, but not only those serving on the MSG, should be able to provide feedback on the EITI process and have their views reflected in the annual activity report.
- c) The MSG is required to submit a Validation Report in accordance with the deadlines established by the EITI Board (see requirement 1.6).

⁷ A standard template is available from the International Secretariat.